

MAY FOSBURGH'S LAST SONG

Her Father Informs Court When and How It Was Sung.

SISTER DESCRIBES BURGLAR'S MA-K

Little Beatrice Tells of the Shrouded Face that Appeared Just Before the Fatal Shot Was Heard.

PITTSFIELD, Mass., July 24.—The attendance at today's session of the Fossburgh trial was many times larger than the courtroom could accommodate and nine-tenths of those present were women.

A number of sensational incidents occurred today. The first coming after Mr. Joyner for the defense had concluded his presentation of what he claimed he could prove, when Frederick W. Lund, bookkeeper and paymaster of the Fossburgh firm, testifying, declared that he felt some of the men who were employed by the firm were dangerous and said he knew they carried weapons.

Another came during the testimony of the father of the dead girl, when he said: "Then May went in and sang several sections, while Mr. Sheldon played the piano. The last song she sang was 'Plains of Peace.' The father had been describing the manner in which the family had spent the evening of Sunday preceding the tragedy. When he came to the reference to May's singing her last song tears came to his eyes, his voice choked and for a few seconds he was unable to continue. Otherwise Mr. Fossburgh's testimony was given in a clear-cut and distinct voice. His narrative of the discovery of the burglars and of his encounter with them was told with rapid distinctness.

When Mr. Joyner questioned Mr. Fossburgh with reference to the meeting with Esther at the depot on the morning after the tragedy and as to what was told her, a refutation of one of the theories which have been prominent in this case was made by Mr. Fossburgh.

"Esther inquired," he testified, "What has happened?"

"Then Robert put his hand on her shoulder and replied: 'Oh, nothing, Esther; only papa and I have been in a little scrap and he got hurt.'"

"It was not," he testified, "a scrap?"

"No, sir," replied the witness with emphasis.

Little Beatrice Fossburgh, called by the government but not used on that side of the case, was on the stand today for the first time while telling the story of the death of her sister. Her description of her glimpse of the intruder who killed her sister was dramatic.

"I saw a pillowcase standing in the doorway," she said, "with holes cut in it for eyes. Then I saw the flash. As my brother rushed by me I turned on the light and cried out: 'Hurry up, there are burglars in the house.'"

Denies Talking with Doctor.

In regard to a reported conversation between herself and Dr. Paddock just after the shooting, the young girl stated positively that she had no conversation with the second floor with Dr. Paddock. She went still further and said she had never talked to him except at the window after they had gone there. The witness denied that she had testified at the inquest that she turned on the light and saw the flash and that she heard a shot before her sister fell to the floor. She said that she did not see her brother, Robert, before she saw the flash from the pistol which caused her sister's death. He was coming from his room when this shot was fired.

Hundreds had to be denied admittance today so great was the interest in the address of Mr. Joyner, the attorney for the defense. Mr. Joyner at the hour of adjournment yesterday had just described the scene on the morning of the tragedy, when he said Robert Fossburgh, who had been beaten by burglars, had recovered consciousness and rushed to a window and screamed "murder!" he resumed today by telling what the Fossburghs knew first in the house. Mr. Joyner said: "We know and the government does not know that it was the defendant's pistol which shot his sister."

He continued: "The firm of R. L. Fossburgh & Co. had many men in its employ, the pay roll amounting to some \$6,000 weekly. The men were non-English speaking and were paid in money at the office of the company. Mr. Fossburgh, Sr., would take the money from the men and give it to them in an electric car. The men knew this and because of the risk, the chief of police had once remarked that if any men needed a pistol they (the Fossburghs) did. For this reason the defendant was not armed."

Mr. Fossburgh, the defendant, and his wife, occupied the kitchen bedroom, but they discovered a disagreeable odor in the sink and moved to another room, leaving some wearing apparel and a pistol in the bedroom.

"Robbery and revenge might have been motives for the burglar," Mr. Joyner declared; "they were young, active, slight men, else they would not have gotten out of the house through the opening left by the screen."

"The defense," he said, "intended to show that the stolen clothing, pillow cases, etc., were thrown by the family into the basket in the carriage house."

Work of Burglars.

"The theory of the defense is that the crime was not the performance of skilled burglars, that the stockings which were worn and cut were drawn on over shoes to muffle the sound of steps; that the tracks seen were made by the men when they left the house and that they intended to steal anything they could lay hands on."

"Men were seen running down Benedict street after the tragedy," he said, "and it is the theory of the defense that they doubled on their trail and when the posse came along joined in the pursuit, thus diverting attention from themselves."

"The furniture in the house was cheap and easily broken and it was broken," he asserted, "in the struggle in the back room. There was only a narrow space between the bed and the bureau and the defense claims that the bureau was twisted around during the fray."

In conclusion Mr. Joyner said: "The defense will show that the family had done its utmost to bring to justice the men who entered the house, and whatever may be the theory, the fact is that the family was an enemy. In her home and in her church she won the affection of all who knew her. She was her brother's companion, her mother's idol, and to the younger members of the family she was ever helpful. There was no room for management between any members of the family."

Mr. Joyner concluded just before 10 o'clock and the witnesses for the defense, including neighbors, members of the family and Miss Bertha Sheldon, were sworn in a group.

Fred W. Lund Testifies.

Fred W. Lund, paymaster for Fossburgh, who boards at the Shepherdson house, testified that on the night of the shooting he was awakened by Mr. Sheldon, who told him that there was trouble at the Fossburgh home. Witness ran there and saw Robert L. Fossburgh, from whom he learned that May Fossburgh was injured. Witness went to his office to call a doctor. There he found James Fossburgh, trying to get the physician. He told of seeing the body of Miss May Fossburgh upon her return to the house. While upstairs he noticed that the end of the dresser in the kitchen bedroom was pulled out about one foot. This was the first time in the trial that evidence was introduced to show that the bureau was pulled away from the wall.

Going to the cellar he found the electric light turned on at the switch near the door. He found without a doubt the light four feet from the balcony and footprints in the dirt on the left side of the road. The witness described the search that he made with the state officers. Mr. Lund said he saw the defendant's pistol at the office on the day after the tragedy. Mr. Fossburgh with a pistol. He was shown the shoe which had been found around the Fossburgh house and he said he never saw the defendant nor the defendant's father.

Robert T. Fossburgh, the father of the defendant, was called. He began by describing the movements of his family from the time they came to Pittsfield till the day of the shooting. The defendant and his wife came to Pittsfield on the morning of July 1. He said he employed about 270 men in his business as a contractor. They were mostly Italians and came from New York. Mr. Fossburgh described the day previous to the tragedy. He found the body had returned Saturday from St. Louis, where she had been for six weeks owing to the illness of her father. He spoke of Miss Sheldon as on a visit to his house, having been there for two or three weeks.

Mr. Fossburgh told of the shooting. He said he was awakened by his wife; that he asked her what was the matter and she saw what appeared to be a light moving in the hallway. He raised himself upon his elbow and saw two men walking into the room toward his bed, one of them holding a pistol in his hand and pointing it toward the face of the witness. Mr. Fossburgh sprang up, shouting, and got his feet upon the floor. He struck the man on the muscle of the arm and knocked the revolver out of his grasp. Then he himself was struck with a sandbag and he could not get up. He went to the window and saw some one standing by the bedroom looking out. The next thing he remembers that he heard his wife cry: "Oh, mamma, look at May; she is hurt!" He then went back and saw his daughter on the floor, her mother by her side and James leaning over her head. Robert, the defendant, came into the room and fell down. Beatrice brought some water and the witness threw it into his face. Witness then ran to the front window and cried: "Police! Murder! We want help!" Mrs. Plumb came to the window of her house to inquire if anything was wrong. He testified that burglars had been in the house and had shot May. He then ran back to Mrs. Fossburgh and to where May was lying.

He thought that he went to the window a second time and then to the first floor, where he saw Lund and Sheldon. He recalled that he went upstairs. He did not know that he was hurt until attention was called to his left eye, which was entirely closed, and the side of his face, which was black. He did not say anything to the family about his wound.

On the subject of what had been done to detect the burglars, Mr. Fossburgh spoke of employing four detectives. He offered a reward of \$1,500 for the arrest of the men and that offer still holds.

At this point the court took a recess.

After recess Mr. Joyner continued his direct examination of Mr. Fossburgh. He asked the witness if he could identify the men. Mr. Fossburgh said they were pillowcases over their heads for masks and that one of the men was taller than the other.

District Attorney Cross-Examines.

At this point District Attorney Hammond began his cross-examination of the witness. In response to a question Mr. Fossburgh said that the pillowcases were pulled down over the heads of the burglars, with the corners sticking up and that they extended over the breasts of the men.

In regard as to when he first saw his son, Robert S. Fossburgh, he declared that it was when he passed through the hall and stepped into the kitchen bedroom.

In response to various questions by Mr. Hammond Mr. Fossburgh said in substance, that he saw young Mrs. Fossburgh and he observed that her nightdress was torn. He had no recollection of hearing pistol shots or of making a statement that he had heard a pistol shot. When he dashed the pistol from the man's hand he had the impression that it was knocked against the bureau.

"When Esther came did your son say to her that he had been in a scrap?"

"No, sir," she said, "he said that he had been in a scrap and that he had been in a scrap."

"Oh, nothing, Esther, only papa and I have been in a scrap."

"It was not," he said, "a scrap?"

"No, sir."

After Mr. Fossburgh's cross-examination was concluded Miss Beatrice Fossburgh, sister of the defendant, was called to the stand.

"Plains of Peace."

She said she was 15 years old. She testified that in the morning, with her father and mother, she had gone to church. Miss May Fossburgh, James Fossburgh and Miss Sheldon went to another church. A question which was asked her, as to what was read by her mother to May and James on Sunday evening, was objected to by the government, but was allowed by the judge. Miss Beatrice remembered that the

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The payee of a negotiable promissory note, who receives other notes from the maker as collateral security, may lawfully assign such collateral to one to whom the former assigns the principal note, and if the assignee wrongfully converts the collateral to his own use, the payee in the principal note will not be liable in trover for such conversion. 38 S. E. Rep. (Ga.) 836.

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Where a bank collects a note for a stranger and intermingles the money received with its own moneys, and afterwards becomes insolvent, a trust attaches to the money in possession of the bank to pay such note, though no trust attaches to the general assets of the bank, since it is presumed that the bank paid out its own money before embezzling the money of others. 60 N. W. Rep. (S. D.) 21.

Defendant contended that he made arrangements with the president of the plaintiff bank whereby the proceeds of certain cotton to be sold by a firm of which defendant was a member was to be applied on the note in suit. The money realized from the cotton was applied by the bank

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A passenger on an open street car signalled the conductor to stop and, after the latter pulled the bell and as the speed slackened attempted to alight and step with one foot on the car and the other on the running board. Observing that the car was not stopping at the crossing, he withdrew his foot from the running board, stood just inside of the car, firmly holding the hand rail, and again signalled the conductor to stop. He again rang the bell and the speed slackened until the car almost stopped, when it suddenly accelerated, giving the car a jerk which threw the passenger off. Held, that he was not chargeable,

Life Insurance.

A person who acts as agent of an insurance company, in soliciting, receiving and forwarding to the company applications for life insurance, during a period when he does not have the license required by revised statutes, chapter 40, section 73, and amendments, cannot recover of the company the compensation for such services provided in the contract between him and the company. 40 At. Rep. (Me.) 51.

Liquor Trade.

Where intoxicating liquors are sold in Massachusetts with intent by the buyer to resell them in another state, contrary to the laws of that state, the seller's mere knowledge of the buyer's intent will not prevent recovery of the purchase price. 60 N. E. Rep. (Mass.) 383.